

**BEFORE THE**  
**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**  
**DOCKET NO. 2018-163-E**

In Re:	)	
	)	
SolAmerica SC, LLC and Edgefield County	)	
S1, LLC,	)	<b>SOUTH CAROLINA ELECTRIC &amp;</b>
	)	<b>GAS COMPANY'S REPLY IN</b>
Complainants,	)	<b>SUPPORT OF MOTIONS TO DISMISS</b>
	)	<b>COMPLAINTS</b>
v.	)	
	)	
South Carolina Electric & Gas Company,	)	
	)	
Defendant/Respondent.	)	
	)	

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Defendant/Respondent, South Carolina Electric & Gas Company ("SCE&G"), pursuant to S.C. Code Ann. Regs. § 103-829(A) and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, hereby submits this Reply in support of its Motion to Dismiss the Complaint to Maintain Status Quo and its Motion to Dismiss the Complaint Requesting Modification (collectively "Motions to Dismiss").<sup>1</sup> For the reasons set forth in SCE&G's Motions to Dismiss, and incorporated responses to Complainant/Petitioner SolAmerica SC, LLC's and Edgefield County S1, LLC's (collectively "Complainants") original filings, Complainants' late attempt to revive the expired Power Purchase Agreement ("PPA") and modify the Interconnection Agreement ("IA") should be denied.<sup>2</sup> As a decision on the merits of Complainants' filings are held in abeyance, SCE&G submits this Reply in an effort to complete the record as to its

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<sup>1</sup> In the interest of judicial economy, given that Complainants' Response to SCE&G Motion to Dismiss the Complaint Requesting Modification and Complainants' Response to SCE&G Motion to Dismiss the Complaint to Maintain Status Quo are nearly identical, SCE&G submits one Reply addressing both Responses.

<sup>2</sup> On May 9, 2018, Complainants made two filings: (1) a Request for Modification and (2) a Motion to Maintain Status Quo. The Request for Modification seeks to extend the Completion Deadline in the applicable IA. The Motion to Maintain Status Quo attempts to reverse the automatic termination of the PPA pending a decision on the Request for Modification. On June 7, 2018, the Commission entered an Order stating the Request for Modification and Motion to Maintain Status Quo should be construed as complaints (collectively the "Complaints"). On June 27, 2018, SCE&G filed the subject Motions to Dismiss.

Motions to Dismiss. In responding to SCE&G's Motions to Dismiss, Complainants seek to reserve the right to file a more substantive response at some future point. Therefore, SCE&G submits this Reply largely in an effort to correct any potential confusion regarding the procedural posture of parties and the legal effect, if any, of Complainants' filings, and reserves the right to respond to any future substantive response Complainants may file.

### ARGUMENT

Upon timely request, the Commission may modify the terms of an existing IA or PPA when doing so is in the public interest and in keeping with the underlying terms and conditions of the PPA or IA. The circumstance presented by Complainants meets neither criteria.<sup>3</sup>

Complainants' request is untimely, as Complainants operate on the mistaken assumption that the mere filing of the subject Request for Modification and Motion to Maintain Status Quo automatically suspends their obligations under the IA and PPA. If, as Complainants contend, the act of filing a request for modification or similar motion excuses the moving party from all obligations under an agreement, interconnection customers can unilaterally extend any deadline in an IA or PPA by simply filing a motion. In doing so, the interconnection customer is provided time not contemplated under the agreement to fulfill its obligations. The unfairness to SCE&G, South Carolina ratepayers, and other interconnection customers lower in the queue is readily apparent. Complainants' position is akin to arguing that one who files a motion for a preliminary injunction is automatically granted the requested relief solely by filing the motion.<sup>4</sup> Without

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<sup>3</sup> The Commission has held that granting a request for modification premised upon a solar developer's economic concerns is not in the public interest. *See e.g., In Re: Lily Solar LLC*, 2016-89-E, 2017 WL 1037855, at \*6 (Mar. 14, 2017).

<sup>4</sup> The comparison to injunctive relief is appropriate as the Motion to Maintain Status Quo is essentially a motion for a preliminary injunction using different terms. The South Carolina Supreme Court has repeatedly stated that "[t]he sole purpose of an injunction is to preserve the status quo." *See Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973).

even giving SCE&G an opportunity to be heard, Complainants assume that filing a motion excuses their previously agreed-upon obligations under the PPA.

As noted in SCE&G's Motions to Dismiss, Complainants have also demonstrated no appropriate basis by which to extend the initial date Complainants must post their Development Period Credit Support under the PPA or, for a second time, the Milestones that Complainants must complete to reach their in-service date under the IA. As to the PPA, Section 9.3 of the PPA clearly provides that if the "Development Period Credit Support is not posted within thirty (30) calendar days of the Effective Date of this Agreement, this Agreement shall become null and void and deemed to be terminated." It is undisputed that Complainants failed to post the Development Period Credit Support and that the Commission took no action prior to the expiration of the thirty-day period set forth in the PPA. Complainants offer no valid argument for the reversal of the automatic termination, and it is clear that the agreement became void at the fault of Complainants. There is a marked distinction in the Commission modifying the terms of an otherwise valid agreement and the Commission reviving an agreement that has been terminated based upon the failure of one of the parties.

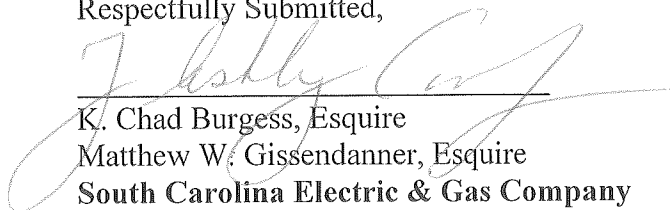
SCE&G's Motion to Dismiss the Request for Modification of the IA explains that Complainants do not show good cause to again extend the Milestones of the IA. SCE&G does not dispute that Complainants may seek modification of an agreement within the jurisdiction of the Commission. However, neither Section 12.12 of the IA nor S.C. Code Ann. § 58-27-980 provides that a party seeking modification is excused from its obligations in the interim. While SCE&G recognizes the ability of the Commission to oversee contracts between the utility and interconnection customers, the party seeking modification must ensure that it continues to fulfill its obligations under the contract prior to the grant of any requested relief.

### CONCLUSION

Complainants' own inaction and failure to fulfill their obligations in the years since signing the IA precipitate this dispute. Although Complainants attempt to highlight the work that has been completed on the project (work that is outside the scope of the IA), it is undeniable that Complainants have failed to timely fulfill their obligations set forth in the IA. Complainants have also failed to meet a critical first deadline under the PPA and seek to reverse the automatic termination. Simply filing its Complaints does not stay the contractual obligations or otherwise suspend the operation of the contracts. Complainants have not demonstrated good cause for the Commission to revive the PPA, further extend the IA, and then rewrite the terms of both agreements. Therefore, SCE&G renews its requests that the Complaints be dismissed.

[Signature Block Follows]

Respectfully Submitted,



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